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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 22 2004

Federal Communications Commission
Office of Secretary

In the matter of)

Applications of AT&T Wireless Services, Inc. and)
Cingular Wireless Corporation)

For Consent to Transfer Control of Licenses and)
Authorizations)

File Nos. 0001656065, *et al.*)

and)

Applications of Subsidiaries of T-Mobile USA,)
Inc. and Subsidiaries of Cingular Wireless)
Corporation)

For Consent to Assignment and Long-Term *De*)
Facto Lease of Licenses)

File Nos. 0001771442, 0001757186, and)
0001757204)

and)

Applications of Triton PCS License Company,)
LLC, AT&T Wireless PCS, LLC, and Lafayette)
Communications Company, LLC)

For Consent to Assignment of Licenses)

File Nos. 0001808915, 0001810164, 0001810683,)
and 50013CWAA04)

WT Docket No. 04-70

WT Docket No. 04-254

WT Docket No. 04-323

To: Office of The Secretary; Attention Commissioners

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION
FILED BY
ACADIANA CELLULAR GENERAL PARTNERSHIP

December 22, 2004

Acadiana Cellular General Partnership (Acadiana Cellular or the Partnership) by and through its two controlling General Partners, Louisiana Cellular, Inc. (LCI) and Delcambre Cellular, Inc. (DCI),¹ and LCI and DCI in their own right (Petitioners), by legal counsel, hereby Reply to the Opposition to Petition for Reconsideration (Opposition) filed herein by the other General Partner in Acadiana Cellular – BellSouth Mobility, LLC d/b/a Cingular Wireless Corporation (Cingular) as follows:

Petitioners Have Made The Case for Reconsideration

Petitioners submit that they have made their case for the relief they requested – Reconsideration of the Federal Communications Commission’s (FCC or Commission) conditional grant of the transfer of control of the radio licenses held by AT&T Wireless Service, Inc. (AWS) to Cingular² – more, specifically, divestiture by Cingular of all acquired AWS assets in the Baton Rouge, Louisiana Basic Trading Area (BTA032), or in the alternative, pursuant to public notice, the conduct by the Commission of a thorough on the record investigatory proceeding to determine how the merger of Cingular and AWS will impact competition in Acadiana Cellular’s service territory and how the merger will impact Acadiana Cellular’s customer base, including the solicitation of input from the United States Department of Justice Antitrust Division.³

¹ Petition at n. 1.

² *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, FCC 04-255, (rel. Oct. 26, 2004) (*Merger Order*).

³ Acadiana Cellular observes that nowhere in its Opposition does Cingular address Petitioner’s request for analytic input from the United States Department of Justice Antitrust Division. Nor, does it address Petitioner’s request that Cingular answer the detailed eighteen questions in the Muleta Letter. See Petition at p. 8.

Cingular's Opposition is obfuscatory – linguistic legerdemain. Cingular seeks to avoid the evidence that it has acted and continues to act patently anti-competitively and contrary to the public interest, emboldened by its ownership interests in five different entities competing in BTA032,⁴ and that by virtue of the approved merger, Cingular controls an additional 30 MHz of valuable PCS spectrum in such BTA overlaying its other partnerships. Acadiana Cellular again states its belief that upon recognition by the Commission that Cingular has both cellular partnerships and controlling interests in wireless PCS systems (acquired from AWS) in the same BTA, it will quickly order a remedy.

Cingular's Arguments Are Wrong

Cingular's two arguments are that Petitioners lack standing and that the Petition lacks merit. Cingular is wrong on both counts. LCI and DCI each hold 32.5 percent of Acadiana Cellular, thereby together having a controlling 65 percent interest in Acadiana Cellular as General Partners. By bringing to the Commission's attention the extent of Cingular's spectrum holdings and pervasive market overlap, Petitioners are turning to the Commission for relief as the means of saving the Partnership from the overt, threatened annihilation by Cingular, Acadiana Cellular's current Managing General Partner. If Cingular kills the Partnership through its anti-competitive behavior, not only is Cingular injured, but LCI and DCI also suffer irreparably as a consequence.

“A fundamental tenet of the Commission's public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.”⁵

⁴ Acadiana Cellular, BellSouth Mobility, LA RSA #7, Lafayette MSA, and AT&T Wireless.

⁵ *Merger Order* at p. 35.

The approved merger of Cingular and AWS has, in fact, allowed Cingular to enhance its significant market power in Acadiana Cellular's service area and it has allowed Cingular to facilitate its enhanced market power to the direct detriment of Acadiana Cellular and to the indirect detriment of LCI and DCI.

As evidenced by the attached Declaration of Alvin E. Kimble, Cingular's designated representative did, in fact, make representations and inducements to LCI's and DCI's designated representatives prior to the Commission's conditional approval of Cingular's merger with AWS regarding the sale of the AWS spectrum to Acadiana Cellular, presumably on fair and reasonable terms and at a market-based price.⁶ LCI and DCI relied on Cingular's representations and inducements, which LCI and DCI only learned were false and not made in good faith after the Commission conditionally approved the merger. Had Cingular acted as an honorable fiduciary of Acadiana Cellular and a virtuous partner of LCI and DCI in accordance with its representations and inducements, LCI and DCI would have no reason to bring to the Commission's attention the extent of operational and spectrum overlap because the status quo of Cingular, LCI and DCI all acting together within the Acadiana General Partnership would not have been fractured. Thus, Petitioners have provided both the required statement of how the Petitioner's interests are particularly adversely affected by the merger approval and "good reason" why they did not participate in the earlier stages of this proceeding. Thus, Petitioners have justified that they have standing to file these pleadings pursuant to Section 1.106(b)(1) of the Commission's rules.

⁶ This Declaration effectively rebuts the Cingular's unsubstantiated claim that it, "***never*** made an offer to sell the BTA Licenses to Acadiana prior to merger approval...." See Opposition at p. 5.

Cingular is Abusing Market Power

That Cingular threatened to deny Acadiana Cellular critical resources (switching, management, billing and collection, use of the Cingular brand name, etc.) and to transfer customers of the Partnership to Cingular's new PCS cellular system (acquired from AWS) in which neither LCI nor DCI would participate, unambiguously is an overt and direct injury caused by the *Merger Order*.⁷ It is simply disingenuous to state that Petitioners' reliance on a false inducement made to them by Cingular "does not establish good reason for the failure to timely participate at an earlier stage of the proceeding."⁸ It is likewise hypocritical for Cingular to state that "...the Petition is an attempt...to gain leverage in a private business dispute...."⁹ The facts are to the contrary – Petitioner's actual concern is that Cingular is leveraging its dominant spectrum and market positions to both coerce a ransom-like price from LCI and DCI for the recently-acquired AWS PCS spectrum and to force LCI and DCI to relinquish their voting and economic control of Acadiana Cellular.¹⁰ Neither position is acceptable to LCI and DCI. Therefore, the instant Petition is all about reining in Cingular's unbridled market power.

⁷ Opposition at p. 6.

⁸ Id. at p. 4.

⁹ Id. at p. 2

¹⁰ See Opposition at p. 6-7, where Cingular argues that the attribution of the AT&T Wireless spectrum would be the same whether it goes directly to Cingular or to Acadiana Cellular. This argument is but a distraction from the gravamen of Cingular's wrongful intent. If the spectrum does not become available to Acadiana Cellular (the obvious first choice), surely it cannot be held by Cingular, which threatens to use the spectrum to directly compete with Acadiana Cellular. Cingular has the most intimate and confidential business knowledge of Acadiana Cellular – a detailed and precise understanding of all aspects of the business it has managed for years, including Customer Proprietary Network Information. Rather, if the spectrum is not contributed to Acadiana Cellular, it must be divested to a disinterested third party (a poor second choice).

Cingular – Goliath – to the detriment of Acadiana Partnership is attempting to overtly intimidate LCI and DCI – David – in an anti-competitive and predatory manner. As a “bad actor,” Cingular’s anti-competitive behavior merits close scrutiny from the Commission.

Conclusion

Petitioners turn to the Commission for a grant of Reconsideration, requesting that the Commission either require Cingular to divest the PCS spectrum acquired from AWS in BTA032, or for a market and public interest analysis based in input from the Department of Justice and Cingular’s on the record responses to the eighteen questions posed by the Muleta letter. Thus, it is in the public interest for the Commission to grant the instant Petition.

Respectfully submitted,



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December 22 2004

¹¹ Admitted in Maryland; Not admitted in D.C.

Declaration of Alvin E. Kimble

I, Alvin E. Kimble, do hereby declare upon oath this 22nd day of December 2004 that the following is true, to the best of my knowledge, information and belief:

1. I am the Chief Executive Officer of Louisiana Cellular, Inc. (LCI), a Louisiana Corporation in good standing.
2. LCI is a General Partner, with a 32.5 percent interest, in Acadiana Cellular General Partnership (Acadiana Cellular), which provides cellular radio telephone services generally in Louisiana CMAs 5 and 6.
3. There are two other General Partners in Acadiana Cellular: Delcambre Cellular, Inc. (DCI), which also holds a 32.5 percent interest in Acadiana Cellular and BellSouth Mobility, LLC d/b/a Cingular Wireless Corporation (Cingular), which holds a 35 percent interest in Acadiana Cellular.
4. Prior to November 4, 2004, on more than one occasion, Cingular's designated representative to Acadiana Cellular advised me that AT&T Wireless Spectrum in the Baton Rouge, Louisiana Basic Trading Area (BTA032), if acquired by Cingular, would be sold to Acadiana Cellular. Based on past dealings with this representative and with Cingular, it was categorically understood that the AT&T Wireless Spectrum would be sold to Acadiana Cellular on fair and reasonable terms and at a market-based price.
5. As a result of the advice of Cingular's designated representative to Acadiana Cellular, past dealings with such representative and with Cingular and with a firm belief that the subject AT&T Wireless Spectrum would fairly and reasonably be made available to Acadiana Cellular and that such spectrum would therefore benefit Acadiana Cellular, LCI was induced not to file any intervention or information with the United States Department of Justice (DOJ) or with the Federal Communications Commission (FCC) regarding their review of the proposed merger between Cingular and AT&T Wireless.
6. At a meeting held between the General Partners of Acadiana Cellular on November 4, 2004, (after the Cingular-AT&T Wireless merger was approved by the DOJ and the FCC) LCI and DCI were advised by Cingular's designated representative that if LCI and DCI did not accept the terms for the AT&T Wireless Spectrum being offered by Cingular, Cingular would go into direct competition with Acadiana Cellular using the AT&T Wireless Spectrum, no longer offer management services to Acadiana Cellular, would deny Acadiana Cellular access to Cingular's switch, would require that Acadiana Cellular to do its own billing and collection, and that Cingular would use the Cingular trade name against LCI, DCI and Acadiana Cellular. Further, Cingular demanded that LCI and DCI relinquish control by becoming Limited Partners rather than General Partners and that LCI and DCI pay Cingular ten or more

million dollars. Moreover, in the absence of offering Acadiana Cellular access to switching, using the Cingular name, performing billing and collecting services, etc., Cingular stated that it would expect the same kind of performance from the stripped-bare Acadiana Cellular as Cingular had provided as Managing General Partner. These terms are clearly unfair and unreasonable beyond the peradventure of negotiations among parties—all of whom should have the welfare and the same profit motivations for Acadiana Cellular in mind. LCI and DCI were faced with Cingular both gutting the company and ceding our controlling partnership interests to Cingular at an unjustifiably high price.


7. LCI, as has DCI (the holders of the controlling partnership interests of Acadiana Cellular), has authorized the law firm of Irwin, Campbell & Tannenwald, P.C. to prepare and file necessary pleadings with the FCC (and/or with the DOJ) to bring to attention Cingular's abuse of market power and anti-competitive activities. Otherwise, to obtain justice and relief for LCI, DCI and Acadiana Cellular.



Alvin E. Kimble, for Louisiana Cellular, Inc.

Certificate of Service

I, David A. Irwin, do here by certify that a copy of the foregoing "Reply to Opposition to Petition for Reconsideration" as filed by Acadiana Cellular General Partnership, was served on the following people by first class United States Mail, postage prepaid, this 22nd day of December, 2004.


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